IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO. 852 OF 1997

1. N.C. Narielwalla Agiary Trust

2. Mr. ADI J. Engineer (Trustee)

3. Mr. Noshir Mirza (Trustee)

4. Mr. Rustom J. Balsara (Trustee)

5. Mr. Minoo J. Balsara (Trustee)

all having office at N.C.Narielwalla Agiary Bldg.
Mumbai Marathi Granth Sanghrahalaya Marg,
Naigaum Cross Road), Dadar, Mumbai-400 014.

6. The Narialwala Agiary Co-operative
Housing Society Limited, Nowroji House,
Mumbai Marathi Granth Sangrahalaya Marg,
(Naigaum Cross Road), Dadar,Mumbai-400 014.

7. The Greater Bombay Co-operative Bank Ltd.
A Bank duly registered under the Banking Act,
having its Branch Office at Nowroji House,
Ground Floor, Mumbai Marathi Granth
Sangrahalaya Marg, (Naigaum Cross Road)
Dadar, Mumbai- 400 014. .. Petitioners

v/s.

1. The State of Maharashtra
Through the Collector of Mumbai
having office at Old Customs House,
Fort, Mumbai-400 001.

2. The Municipal Corporation of Greater Mumbai
Having its offrice at Mahapalika Building,
Mahapalika Marg, Fort, Mumbai-400 001.

3. Mr. B.S. Jadhav
The Deputy Municipal Commissioner, Zone II,
3rd Floor, F/South Muniicipal Ward Bldg.,
Parel, Mumbai-400 012.

4. The Ward Officer,
F/North Ward, Matunga,
Mumbai- 400 012.

5. The Ward Officer,
F/South Ward, Parel,
Parel, Mumbai- 400 012.

5(a) The Mumbai Electric Supply and
Transport Undertaking,
having office at Colaba,
Mumbai-400005.

6. The Senior Inspector of Police
Matunga Police Station,
Matunga, Mumbai- 400 019.

7. Mr. Chandrakant Kamble
of Mumbai, adult, Indian Inhabitant,
Occupation-Business, carrying on
business at Kamble Shoe Mart,
Mumbai Marathi Granth Sangrahalaya Marg,
(Naigaum Cross Road)
Dadar, Mumbai-400 014.

8. Bhartiya Charmakar Samaj Unnathi (Regd.)
Society, through its President
respondent No.7. .. Respondents

Mr.M.C. Shah i/by Mr. R.R. Sharma for the petitioners.
Mr. N.P. Pandit, Assistant Government Pleader for the respondent Nos.1

and 6.
Mr. J.S. Saluja i/by M/s. Kini & Co. for the respondent No.5(a).
Ms. A.K. Savla for the respondent Nos.2 to 5.

CORAM : R.M. LODHA &
SMT.NISHITA MHATRE , JJ.

DATED : 17TH JANUARY, 2007

ORAL JUDGMENT (Per R.M. Lodha, J.)

N.C. Nariyalwala Agiyari Trust is the first petitioner. Its trustees are petitioner Nos.2 to 5. The petitioner No.6 is the Narialwala Agiary Co-operative Housing Society Limited and the petitioner No.7 is Greater Bombay Co-operative Bank Limited.

2. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioners originally sought to impugn the Zunka Bhakar stall towards south of Mumbai Marathi Granth Sangrahalaya Marg in F/North Ward of Municipal Corporation of Greater Mumbai. By amendment in the writ petition, they have sought to impugn the legality and validity of the common resolution dated 27th April, 1995 whereby the State Government introduced the scheme known as Zunka Bhakar with effect from 1st May, 1995 for giving benefit of the poor and needy persons of the State at the cost of Rupee 1/-.

3. That the respondent No.7 has put up the Zunka Bhakar stall under the Zunka Bhakar scheme, is not in dispute. It is also not in dispute that the land on which the stall has been put up belongs to the Municipal Corporation of Greater Mumbai. The scheme provides that the land for construction of the stall shall be given on gratis for the construction of

Zunka Bhakar stalls by the Corporation or the Government as the case may be. The land for the said stall shall be of area of maximum 200 sq.ft. and minimum 120 sq.ft. Under the scheme, the State bears 50% cost of construction and/or Rs.25,000/- for the purpose of each stall. The scheme provides that the persons conducting the stall shall only continue the business as long as he sells the Zunka Bhakar at the rate of Rs.1 and if that person charges more or he stops the business, the State Government shall be entitled to take back the said land and that person shall not be allowed to continue with the stall.

4. Though the petitioners have alleged that the construction of the stall for Zunka Bhakar under the scheme by respondent No.7 is unauthorised and illegal, from the affidavit filed on behalf of the Municipal Corporation of Greater Mumbai, no doubt is left that he Zunka Bhakar stall has been put up after obtaining the permission from the concerned authority of the Municipal Corporation. The following statement is made in the reply affidavit dated 10th July, 1997 filed by the Municipal Corporation of Greater Mumbai:-

> "..... After inspecting the site, Dy. Municipal Commissioner, Zone II, granted his approval for constructing a Zunka Bhakar Stall and accordingly, directed the Collector, Mumbai be informed. The Collector, Mumbai was accordingly informed by letter dated 19.4.1997 by W.O. Ward Officer F/S Ward. Collector by letter dated 21.4.97 granted his approval for change of site."

5. We were informed during the course of hearing that Zunka Bhakar scheme that came into effect from 1st May, 1995 vide Government Resolution dated 27th April, 1995, has been withdrawn upon revocation of

the said Government resolution dated 27th April, 1995, in the year 1995 and that challenge to the revocation has attained finality right upto the highest court and that the Zunka Bhakar scheme stands revoked. Obviously, in view thereof, the Municipal Corporation of Greater Mumbai is obliged to have a relook at the said structure (Zunka Bhakar stall) in the light of the revocation of Zunka Bhakar scheme since the stall was put up under the said scheme for the specific purpose.

6. Since the resolution dated 27th April, 1995 has been revoked and the Zunka Bhakar scheme has been withdrawn, challenge to the resolution dated 27th April, 1995 does not survive. As noticed by us above, the structure at the time it was put up cannot be said to suffer from any illegality but its continuance needs to be re-examined by the Municipal authorities in the light of changed circumstances.

7. We, accordingly, dispose of the writ petition by the following order:

i) The Ward Officer, F/South Ward, Municipal Corporation of Greater Mumbai is directed to inspect the site within three weeks from the date of receipt of this order and consider whether in the light of the withdrawal of Zunka Bhakar scheme and revocation of the Government resolution dated 27.4.1995, the permission granted by the Municipal Corporation cannot continue and the structure put up by the respondent No.7 has been rendered illegal and unauthorised.

(ii) If the Ward Officer, F/South Ward is of the opinion that the subject structure has been rendered unauthorised and illegal and that the earlier permission granted by the Municipal Corporation cannot continue, he would issue an appropriate notice to the respondent No.7 for removal of the said structure and take the said proceedings to logical conclusion expeditiously.

Writ petition is disposed of with no order as to costs.

(R.M.LODHA, J.)

(SMT. NISHITA MHATRE, J.)